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J. W. Lawrence  
Collection

YOUNG MEN'S ASSOCIATION OF ST. PAUL'S CHURCH, MONTREAL,

Having found that Mr. Ramsay's paper, read before our Association, was reported at length in the *Legal News*, it has seemed advisable to secure its circulation among our members and their friends, and the Editor and Publishers of that journal have kindly allowed their report to be printed off in pamphlet form for that purpose.

W. GEO. BEERS, *President.*

ALEX. MCFEE, *Secretary.*

MONTREAL, 26th March, 1885.

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## TREATIES

AFFECTING

### THE BOUNDARIES AND THE FISHERIES OF CANADA.

(From *The Legal News*, Montreal.)

At a recent meeting of the Young Men's Association of St. Paul's Church, a paper with this title was read by Mr. R. A. Ramsay, advocate. While it was prepared for delivery to a popular audience and for illustration by maps as it proceeds, we have thought that the information contained will be of interest to our readers, and we give it in the form in which it was delivered. The paper, we think, will be the more acceptable, especially to our Junior Bar, as no narrative of the events alluded to is available in a short comprehensive form.

After some introductory remarks, the paper proceeds as follows:—

As a preliminary I will ask you to glance at the list of treaties which affect Canada, first, that with France when Canada was ceded, then those with the United States, and then from out of the many subjects with which those treaties deal, we will consider certain of them to which we must limit our attention for to-night. Here then is our list. In it I have placed as Nos. 2 and 3 documents which, while not really treaties, have much to do with one of the subjects for our consideration.

1. Treaty of Versailles..... 10 Feby. 1763
2. King's Proclamation..... 7 Oct. 1764
3. Quebec Act..... 22 June 1774
4. Treaty of Paris..... 3 Sept. 1783
5. Jay's Treaty..... 19 Nov. 1794
6. Treaty of Ghent..... 24 Dec. 1814
7. Convention, London..... 20 Oct. 1818
8. Ashburton Treaty..... 9 Augt. 1842
9. Oregon Treaty..... 15 June 1846
10. Reciprocity Treaty..... 5 June 1854
11. Treaty of Washington..... 8 May 1871

In these treaties, as may be imagined, a great variety of matters have been discussed

and settled, or thought to be settled,—there have been peace, slave trade, boundaries, reciprocity, extradition for crime, the fisheries, claims on each side and of all sorts, the best known, the most recent, being the celebrated Alabama claims, which were paid for by England on such a liberal scale, and the Canadian Fenian claim, which was tossed aside so lightly at Washington in 1871. The field is very wide, and for your patience I propose that the limits to which we restrict ourselves be these two branches,—questions of boundary and those of the fisheries.

As to the first set of questions, the boundaries, they are finally settled,—all that could on any pretence have been given away by England on Canada's behalf, to satisfy our grasping neighbours, has been given. There are no open questions, no riddles for solution in doubtful description, the boundary is marked from Atlantic to Pacific, wherever it is a land boundary, by iron posts at short intervals.

As to the fishery questions on the other hand, they are unfortunately *not* finally settled, there are several difficult ones which are only sleeping now, they all awake under the termination of the Treaty of Washington, which occurs on 1st July next, by notice from the United States.

The boundary questions were very lively questions in their day. They are dead now. Those of the fisheries are alive and, as stated, only sleeping. Let this decide our order and let us consider firstly the dead issues of the boundaries, and secondly those of the

fisheries of which we will all hear much very soon, when they come up for new and practical consideration.

### 1.—The Boundaries.

By the first treaty on the list, made with France after the conquest of Canada by England—to which of course at that time all the present United States, then the American Colonies, belonged—France ceded all *Canada*, as then known, to England. Nova Scotia, which then included New Brunswick, was already possessed by England, as was Newfoundland. *Canada* was considered to mean all the country occupied by France, and in addition to what is now Quebec and Ontario, included all the countries south of Lake Erie down to the Ohio and following that river to the Mississippi, then up that river to its source. All the land west of the Mississippi was then called Louisiana, and was not ceded to England, but by a secret treaty was given by France to Spain.

Several months after the peace the proclamation of 7 Oct. 1764 was issued by the King of England. By it, out of the ceded country, the Province of Quebec was carved. Its boundaries were, roughly stated these,—from the head of the Baie des Chaleurs along the height of land between the Atlantic and St. Lawrence, to the Richelieu and then along the line of 45° to the St. Lawrence, thence by a direct line to Lake Nipissing, from it to Lake St. John at the head of the Saguenay, then to the St. John River, which falls into the St. Lawrence on its north shore opposite the west end of Anticosti, and then a line across the St. Lawrence round the Gaspé coast and up the Baie des Chaleurs.

These limits, it will be noticed, left all the countries up the St. Lawrence and the Lakes, as well as those of the Ohio and Mississippi, without provision, and apparently treated them as wild fur-bearing territory only without need of control.

Then came the Quebec Act of 1774. This went to the other extreme, and gave the Province of Quebec a territory more extensive than could be fairly governed, for, in addition to the province just described, it included all Ontario, the Lakes, the Ohio country and western lands. Its western limit was de-

fined in a way which has caused much dispute. It was, after the junction of the Ohio and Mississippi, "thence *northward* to the limits of the Hudson Bay." *Northward* was the riddle. The dispute was whether *northward* meant *due north* from the junction, or *northward-like* up the Mississippi in its course to its source and thence north. In those days the source was thought to be much further north than in reality. From this word *northward* many disputes have grown; the most recent has been the boundary dispute between Ontario and Manitoba, recently settled, or supposed to be.

In 1818 there was a trial at Quebec of one DeReinhard for a murder committed near Lake of the Woods, and it was then decided for the due-north line, which we have generally seen appearing so curiously on our maps running north, apparently without reason, on the north shore of Lake Superior between the Nipigon River and Fort William. The recent judgment of the Privy Council appears to decide the other way, and yet some think it a decision of Delphi.

It may be stated that in 1772-3-4, prior to the revolution, by an arrangement between Canada and New York, both then British colonies, the boundary from St. Lawrence to the Connecticut was laid out by two surveyors named Valentine and Collins. Their line was to be the parallel of 45°, but they had apparently imperfect instruments or ability, for they ran the line sometimes north and sometimes south of the true parallel. If the map of this province be looked at, this will be noticed. It was not for many years that the error was discovered, but, being ascertained, the defective line has been very properly adhered to, because private rights had been acquired along that line. In Lord Ashburton's Treaty it is referred to not as the line 45°, but the line laid out to represent 45°. By this error and acceptance of it, however, the United States have their important post Fort Montgomery on the Richelieu, near Rouse's Point, somewhat north of 45° on what should have been British ground.

In 1783, the treaty of peace, after the American Revolution, was executed at Paris. It was negotiated on the side of the United States by the astute Franklin, Adams and

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Jay, and on the side of England by a Mr. Oswald, apparently a man of no merit in English politics. This treaty was the first and great surrender of valuable territory made from inability to appreciate it, and from want of a proper view into the future of America, and, as to boundaries, it gave rise to many troubles. After recognizing the independence of the United States, it proceeded to give the limits of their territories, and gave them boundaries far beyond what they pretended to occupy—far beyond what any colonist of the ordinary type had ever dreamed of. But Franklin was no ordinary man; he saw in these western lands the future states which have since appeared.

The boundary began at the St. Croix, so-called, no river of that name being really then known on the New Brunswick coast—all had Indian names—and when the time came for settlement of the point, there were three or four rivers which disputed the distinction. Then the line was to follow that river to its source, and then due north, it read, to the highlands which separate the rivers flowing into the St. Lawrence from those flowing into the Atlantic (this description we will return to, for from it the long continued Maine boundary dispute arose); then along those highlands to the Connecticut, then along the line 45° to the St. Lawrence, then by the river and lakes to Lake Superior, and then (another disputed part) by a lake which the treaty called Long Lake, but which no one in the country had ever heard of, to the Lake of the Woods and its N.W. angle, and then (another error) due west until the line should strike the Mississippi, and then down the Mississippi to the sea. West of the Mississippi was Louisiana, then, and until 1800, Spanish territory. This last line to the Mississippi was soon found to be an impossible one, for no line west from the Lake of the Woods could strike the Mississippi, which was much to the south.

Now consider this treaty, and what by it England threw away. The old limit of Canada was down to the Ohio. There was little settlement on that river at this time, but the colonists of Virginia claimed it as theirs. It might have been right to cede the Ohio country, but why the west? And why carry the

line up to the north at the Lake of the Woods? All that western country was occupied by the posts of the Canadian fur traders, and royal military forts were at Sandusky, Detroit, Michilimackinac and other points. These had never been captured, or attempted by the revolutionary forces. The boundary, if given at the latitude of the head of Lake Erie, would have been extremely liberal. Where it was placed was without reason, unjust to the Canadian traders, and entirely due to apathy and ignorance on the British side. While we find long discussions on other parts of the treaty, some trivial, the books do not give a trace of effort to retain these lands, which now form so many fertile states. The boundary aroused much indignation in Canada, and partly on this account the western posts were not given up to the United States for several years.

Next, in 1794, came Jay's treaty of amity and commerce. By it the boundary in the north-west was to a certain extent settled. By this time the fact that the Mississippi could never be reached by a line west from the Lake of the Woods had been ascertained, and it was settled that the line of 49°, which was known to be about the latitude of Lake of the Woods, should, whether north or south of its N. W. angle, be the boundary; and Great Britain gave up all the posts which her Canadian authorities had held (of course without right, but as a sort of protest) since the peace of Paris.

Jay's treaty also provided for the unfortunate St. Croix River competition. Commissioners were appointed to decide which of the claimants was the one meant, and to place a monument at its source. In 1798 they did this in a peculiar way. They decided which was the St. Croix, but where it branched at some distance, because the branch which they admitted was the main stream provokingly (for American interests) turned west, they (or the majority) decided that the minor stream should be the boundary, because its direction was more northerly. The Commissioners had here overstepped their duty, but Great Britain complacently decided to accept the illegal decision, and yielded a line which proved later of serious effect on the Maine question. It was a lever placed in



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the hands of the United States diplomatists, which they used on every occasion.

Then came the war of 1812-14, with its varying success, in the ebb and flow of war. In some ways England was unsuccessful, but in the end she held Niagara, Detroit, Mackinaw again, and all the Western Country. She had carried on the war as it were with her left hand, for her right was at the time engaged in the Peninsula. Now that war was victoriously ended. Napoleon was at Elba, and naturally the Americans were anxious for peace, and accordingly they got it by the treaty of Ghent of 1814. But by this treaty England, ready for victory, again treating American territory, however extensive, as valueless, agreed to restore all the captured posts, and to revert to the old boundaries of 1783. England knew of many of the disputed lines. She might have avoided all the troubles of the Maine boundary had she retained her conquests, for she had taken Castine and other posts in Maine down to the Penobscot, and should have then settled in a practical manner the Maine boundary at *that* river; but no, back she went to the old unsettled and disputed and unfair lines. The boundaries were to be as before the war. The great North-West, again retaken, was again to be surrendered as a thing of nothing.

In an effort to settle the Maine dispute on the old description, commissioners were appointed to proceed to the country and endeavor to find and lay out a boundary. What happened might have been foreseen: they could not agree. The American commissioner claimed a line which went close up to the St. Lawrence. The British commissioner claimed one from the source of the St. Croix across to the head-waters of the Chaudiere and Kennebec as being the highlands mentioned in the old treaty of 1783. No decision could be arrived at, and the question was then referred, in terms of Jay's treaty, to the King of Holland as arbitrator, to find, if he could, the true line meant by the wording of the treaty. He spent much time over maps and old documents, and decided that the description of the treaty was not reconcilable with the state of the country; that, as he said, it was "inexplicable and impracticable," and he recommended the parties to adopt some com-

promise boundary to settle the question. England agreed to accept a line drawn by him; the United States refused.

Here, to illustrate the force of the arguments on each side, resort must be had to the maps, which show the rivers, and the watersheds or heights which divide the lands which drain into the Atlantic, the Bay of Fundy, the Gulf of St. Lawrence, the Baie des Chaleurs and the St. Lawrence River respectively.

The difficulty was worse than before. By this time the troubles at the disputed frontier had become very serious. The New Brunswickers and Maine people came in competition and collision in the upper valleys of the St. John and Aroostook. Both governments issued timber licenses in the disputed territory. The danger became more pressing each season.

Attempts at settlement by negotiation were resumed and then occurred to England one of those instances of a neglected opportunity, which, once lost, never returns.

In 1833, when Lord Palmerston was Foreign Secretary, a proposition was submitted on the part of the United States by General Jackson, then President. It admitted, as the King of Holland had decided, that a due north line from the St. Croix was not reconcilable with the other words of the description, and proposed that the line should be drawn from St. Croix to the highlands at the sources of the Kennebec and Chaudiere, regardless of the point of the compass. It did not use these words, but this would have been the effect. The actual terms of the proposal are too lengthy for repetition here. The result of survey by the American proposal would certainly have given the line as now stated. The proposition was later denounced by the hotter Americans as too liberal, but that only proved that it should have been accepted at once. On the contrary, Lord Palmerston pigeon-holed the dispatch for many months and then rejected it, because it did not profess to be made with the consent of Maine. This was not his affair, for had England and the United States come to terms, England could have allowed them to settle the question with the energetic Maine people. The proposition was naturally never renewed.

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On the disputed frontier there was something very near to war. This was happily averted by an American officer, who in later years was much sneered at as "Old Fuss and Feathers," but who was a good soldier in his day—General Winfield Scott. He arranged with the British authorities for joint occupation and a funding of the revenues of the disputed territory until some settlement should be made.

At last in 1842 England determined apparently that the matter must be settled at whatever cost, and Lord Ashburton was sent out with the fullest powers to conclude a treaty upon this and many other matters. We will, however, limit ourselves to the matters of boundary.

He was selected partly because of his connection in business with America,—he was of the banking house of Barings,—he had married in America, and knew many leading people in the States. He was an honourable man, but further was unfitted for his mission. He had had no diplomatic training or experience. He was a good natured but weak man. He whom he had to meet was the astute Daniel Webster, of vigorous and overbearing mind,—a man of great experience in legal ways and diplomatic matters.

Lord Ashburton was fêted for some weeks before he opened his negotiations and reached a state which seems to have made him ready to yield every point to his hospitable entertainers, which his friend Mr. Webster should press; for when the result of the Ashburton Treaty was published it was found that Lord Ashburton had on every point yielded to the overpowering will of his adversary, and that the treaty well merited the term "Ashburton Capitulation" which Lord Palmerston applied to it. From him, however, the expression came with bad grace when it was remembered how he had passed a golden chance a few years before.

By the treaty Lord Ashburton had settled the Maine question. But how? By an abandonment of the greater and best part of the disputed territory. It was called a compromise, but, Mr. Dent has said, it bore a striking resemblance to the immortal Irishman's reciprocity, which was all on one side. True the United States took 5000 square

miles less than then claimed by Maine, but the relinquished part was for most part sterile waste. Lord Ashburton gave up a territory of much greater area, in great part fertile and well timbered. It included the valley of the Aroostook and half of that of the St. John which had already become and has since proved itself a district unsurpassed as a lumber country; and with further obligingness he granted the free navigation of the St. John to the sea to the lumbermen of Maine with their timber which should have remained British. And yet what writes Lord Ashburton in one of his letters to Mr. Croker, recently published:—"I dare say your little farm is worth the whole pine-swamp I have been discussing."

The boundary now gives a line which makes Maine look like a mouthful bitten out of Canada's cake by a greedy boy. Look at it on the map. See the effect, all plans for the Intercolonial R. R. then in progress across what now became Maine had to be abandoned, the enterprise delayed for years, and the length of the road when built nearly doubled. The insertion of Maine, wedge-like between the provinces, is again coming prominently into notice in connection with the recent proposals for the "Short Line" railway from Montreal to Halifax and St. John.

The signatures to his treaty were barely dry,—Lord Ashburton's fêtes in the U. S. over—and he safely away—when a curious matter came to light, which to most minds, not American, has tinged that treaty with disgrace for the American negotiator who obtained it, and for the American people who, when the facts were known, adhered to it.

It turned out that while Daniel Webster was professing his own belief and that of the U. S., for a line far north, and taking credit for yielding for the sake of peace, somewhat in his demands—he knew that the U. S. were not entitled to the line for which he pledged their honour and his own—and he knew that he surrendered nothing for peace, but gained, from a facile negotiator, that to which the United States were not entitled. The story of the red line map may be known to many here, but I may recall the leading facts.

Several months before the negotiation



if the treaty commenced, Mr. Sparks, the biographer of Washington, while engaged in searching the French archives at Paris for materials for his work, made an important discovery. He found a letter from Benj. Franklin to the Comte de Vergennes, written within a few days after the signature of the original treaty of 1783 at Paris between England and her revolted colonies. In this it will be remembered, Franklin was a chief actor. No man knew better than he the precise intentions of the parties. It had been for this reason that, as appears, the Comte de Vergennes, then Prime Minister of France, had written to Franklin, enclosing a map of America, and asked him to mark upon it the boundary line as just settled for the U. S. The letter found by Mr. Sparks was Franklin's reply, returning the map, with the remark that he had marked with a strong red line the limits of the U. S. as settled. Mr. Sparks at once saw how important this map would be on the Maine Boundary Question, if it could be found. It was not with the letter. He instituted search further hoping to obtain proof conclusive of the American claim. He found the map at last, but instead of supporting the American claim, as Sparks had hoped, to his horror, it had on it, marked with a strong red line a boundary which exactly agreed with the British claim. Sparks hastened, however, to communicate his unpleasant discovery to the authorities at Washington, remarking: "In short, it is exactly the line now contended for by Great Britain, except that it concedes more than is claimed by her. It is evident that the line from the St. Croix to the Canadian highlands is intended to exclude all the waters running into the St. John." *Common sense!*

This letter and a copy of the map were communicated to Mr. Webster, who entered upon his negotiations with Lord Ashburton with a full knowledge of Mr. Sparks's discovery, while it was kept a profound secret, until

after the execution of the treaty, and then for very shame might have been kept a secret for years, but that necessity brought it out. This was how it had to come into day light from its hiding. After the genial British envoy had yielded nearly all that grasping Maine had demanded, the Senate at Washington hesitated to give its confirmation to the treaty, as the constitution required. The Senate was urged by the dissatisfied men of Maine to reject it. The opposition was very strong, and while Webster supported his treaty with all his force, he found that the weight of numbers ran against him—"more may yet be gained from England," was the argument for rejection. The division approached and Webster saw the Senate's veto of his treaty at hand. No time was to be lost. The Senate must be "whipped into line," as was said, and in secret session, the letter and the map of Franklin were produced, and Webster's argument was this: "You must ratify my treaty, for we have got by it more than we were entitled to. Refuse my treaty, and with this map, which will soon be known to England, you will never get a boundary so favourable." The Senators looked at the map upon their table, resumed in silence their seats, the opposition in great part evaporated, and in haste the treaty was confirmed.

As to England, what could she do? She had given to Lord Ashburton the fullest powers, he had used them and signed for her. Repudiation even under the circumstances of his deception seemed dishonour and England ratified. It was a woefully bad bargain, but England never dreamed of discrediting her accredited envoy.

Such in brief is the story of the red line map and of the disgraceful success of Daniel Webster. When all that has been said in his defence is read one fails to find that he came from that negotiation with any honour left. The efforts made to relieve him by explanations only serve to indicate the weight of odium which the transaction placed upon him.

To some one the importance of that red line map seemed so great as to justify its disappearance in some extraordinary way between the time at which Mr. Sparks saw, copied and reported on it, and that at which

\* PASSY, December 6, 1782.

Sir,—I have the honour of returning herewith the map your Excellency sent me yesterday. I have marked with a strong red line, according to your Excellency's desire, the limits of the United States, as settled by the preliminaries between the British and American plenipotentiaries. With great respect, I am, &c.,  
B. FRANKLIN.

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new search was made for it after the treaty by an official sent by the British Government. When he turned to the proper place another map had, as we read in Mr. Croker's books, been substituted for it, and this showed no dangerous red line, such as Mr. Sparks had copied with care and sorrow, but, on the contrary, a safe one to support what had been the American claim. It was a mysterious matter. The question which at once occurred was this—Whose interest was it that Spark's map should disappear? What the motive? And yet was the enterprise a judicious one, when Mr. Sparks' copy was on record in Washington? Was not the manipulator of the maps indiscreet in his zeal?

Another matter of boundary was settled, of less consequence at that time, for there were no troubles there then, and yet it was again one where Lord Ashburton yielded every mile of country in dispute. By the treaty of Ghent in 1814 commissioners were to trace the boundary as described in the treaty of Paris of 1783 from Lake Superior to the Lake of the Woods. They met; they disagreed. The British claimed that the line should start from the extreme west end of Lake Superior, at Fond du Lac, now Duluth, and so up to the Lake of the Woods. The Americans claimed the line by the portages. From 1826, when the commissioners were on the ground, until Lord Ashburton came to Washington, the matter was unsettled. He settled it. He gave away the whole, and there is the boundary on the map, following the through portage route to the North West, and not far from our Pacific Railway. Such was his treaty.

Yet Lord Ashburton was, to judge by his letters in Croker's books, rather pleased with his own exploits and charmed with Webster. He had no resentment towards the man who had deceived him. He was too good-natured. On the contrary, he sent him his portrait, and was pleased to have Mr. Webster name one of his children after him.

Before leaving the Ashburton treaty we must note that the line of 49°, which, as we have seen, was under Jay's treaty the boundary from Lake of the Woods to the Mississippi was now continued as the boundary to the Rocky Mountains.

The Ashburton treaty was somewhat encouraging for further demands by the United States, and without delay they came. From Maine the dispute was transferred to Oregon. As already stated the line had been defined at the line of 49° to the Rocky Mountains. Beyond it was not defined. The country was in great part wilderness. There were British settlements at Vancouver Island. All down the Columbia and through Northern Oregon were posts of the Hudson's Bay Co. But not long before this time, the United States had bought from Spain, California, and then claimed the whole of the west coast of America as under this Spanish purchase regardless of British occupation. Emboldened by previous success they claimed it loudly. Russian America came by Treaty of 1825 down the coast to 54°-40, and immediately the demand of the Californians was made in alliterative form, "54. 40 or fight." The Americans had no occupation in Northern Oregon,—while England had—but that was of no consequence. The cry was "54. 40 or fight." England proposed to divide and to take the line of the Columbia to the sea, but the American answer was "No. 54. 40 or fight."

After much correspondence Mr. Packenham, the British ambassador at Washington, was authorised to treat, and he did so on the plan of Lord Ashburton,—to give all away. He first took the pains to ascertain—for he was a sportsman—that while the Columbia was full of salmon, those fish of the west were so absurd in their habits as to decline to be caught in the true sportsmanlike way—they absolutely refused to rise to the gaudy fly. *Ergo*, the salmon were worth little, the river nothing, and the whole ridiculous country less, and the sooner given away the better. The Americans offered, as in Maine, to yield something. "We will take the line of 49° from the mountains to the sea, and, to show our good nature, we will not mind about the tip of Vancouver Island, which that line would cut off. You may have that." With profound thanks Mr. Packenham accepted the concession and concluded the Oregon treaty of 1846.

After this treaty the boundary along the line of 49°, from the Pacific to the summit of the Rocky Mountains, was laid down by boundary marks.

See before - this stream of opinion

Now, one would have thought that all the boundaries were settled. But no, from the Oregon treaty came the San Juan dispute. The treaty declared that the boundary after reaching the sea in  $49^{\circ}$  should go through the middle of the channel between mainland and Vancouver Island out to sea. There is a group of islands in this arm of the sea, Fuca's Straits, the main one San Juan. Besides several minor channels it turned out there were two main channels, the Haro and the Rosario. The Haro further out and thus giving the islands to the United States and bringing the line near the British town of Victoria on Vancouver,—the Rosario nearer mainland. The United States claimed the Haro and the British the Rosario, as the true channel meant by the treaty. While correspondence was going on, a fire-eating general of the United States, Harney by name, took possession of the island of San Juan. British war ships were sent out to attend to the matter which had at once a dark look. Again General Scott, for a second time a peacemaker, appeared and arranged pending the settlement for a joint occupation of the island by troops of each side. This continued until this dispute was, with many others, settled by the treaty of Washington of 1871, and within our own time. It was referred to the Emperor of Germany as arbitrator. He decided for the Haro channel and for the United States, and again the United States got the better of England and has a boundary within sight of Victoria. None can, however, find fault with the decision of the Emperor. England agreed to accept his decision, and he gave it, and at once England withdrew her garrison. Where the British envoys at Washington erred—but then they followed the previous disputes—was in allowing the question to turn on this: whether the Haro or Rosario was the true channel; for there was a third, intermediate, the Douglas, which more than either had claim to be most fair to both sides and to suit the requirements of the Oregon treaty.

By the treaty of Washington it was provided that the boundary from the Lake of the Woods to the Rocky Mountains should be marked out by a joint commission, and this was soon after done along the line of  $49^{\circ}$ , and

brought into prominent notice on the maps the curious notch in British territory which the possession of the United States to the N.W. angle of the Lake of Woods, as defined by former surveys, gives them.

Thus ends our hasty review of the boundary questions under the various treaties. The retrospect is not a pleasant one. With regard to each treaty the Canadian feeling has been that on each England was too yielding; the value of the territory was not appreciated; and her diplomatists were outmaneuvered on every occasion. But all is past and the situation must be accepted. The boundary from Atlantic to Pacific is conclusively settled and at least no source of trouble can now arise on that ground.

Let us pass to what is still an open question, and to the other branch of our subject for to-night.

### *The Fisheries.*

Before discussing the Canadian fisheries in relation to the treaties, it will be proper to take a glance at the nature of those fisheries themselves. The main fishery of America is of course the cod fishery of the banks of Newfoundland. This, as well as all open sea fishing, is free to all nations. It is not our exclusive property, nor is the fishing generally over the Gulf of St. Lawrence, nor, in fact, anywhere except within three miles of shore,—which is, by the law of nations, the territorial possession of each people. Within that distance no foreigner can come to fish unless by treaty right or license from the nation of the shore. This is universal law.

Now for the deep sea fishing with any profit, there are required two things. The *first* is the ability to get fresh bait. The bait used consists mainly of a small fish called caplin, of squid and some others. It should be fresh. Fishing schooners from France or the United States cannot bring bait with them which will be of use. These bait fishes are in-shore fish, and it may be said generally that they are only found within the three-mile limit. Thus fishing vessels coming to the banks must first go in-shore to catch or buy a stock of fresh bait, and this must be obtained not too far from the bank fishing grounds. Without the

right to get bait in-shore, the bank fishery, which is, as stated, open to all, is nearly valueless. The *second* thing required for successful bank fishing, is the liberty to cure the fish on shore, and pack them for transport to the vessel's home. At sea, naturally, the process of drying and curing cannot be carried on. The fish are merely split and cleaned and salted to preserve them. What is required is that the vessel should go in-shore, land her fish, which are spread upon frames to dry. It has been found that the climate of the coasts of Newfoundland and the Gulf is more favorable than any other for the successful open-air drying of fish. Thus, in order to make her catch useful, a vessel must have the privilege of going in-shore to dry her fish on land, else she might almost as well have remained at home. Again the bankers, as cod fishing vessels of the banks are called, often require to run in-shore to refit damages, get water, and buy stores, salt and provisions. For these reasons the privilege of coming within the three-mile limit and of going ashore is invaluable to the foreign cod fishers, and yet by our *rights*, we are entitled to exclude them and to preserve these privileges for our own hardy fishermen.

In addition, it must be noted that the waters of the three-mile limit teem with fish which frequent, not the deep waters, but those shallower and warmer limits. Here are the halibut, and, oftener than elsewhere, the mackerel and herring, and many others in abundance.

The right to fish within the three-mile limit is itself a valuable right belonging to the people of the shore. Now while all the world has the right to fish upon the banks and open sea, the use of the three-mile limit is practically limited, outside our own people, to the fishermen of France and the United States, because these are the only nations with whom we have treaties permitting the use of the inshore fisheries and of the shore itself. A large part of the fish catch goes to Spain and Roman Catholic countries, and yet no Spanish or other vessels come; for, while they could use the open sea, they have not the needed privileges of the shore.

Although France and her rights are not

strictly within the limits of my subject, it seems yet proper to say some words on those rights, which were granted long ago, and have an indirect connection with the matter in hand. These rights resulted in great troubles in Newfoundland. Besides producing constant quarrels between the fishermen, they cause a large part of the coast to be absolutely shut out from development by British energy. This extent of coast is that known as the "French Shore."

The rights arose in the following way:—The treaty of Utrecht was made in 1713. France had been in possession of Newfoundland, but some of her forts had been taken by England during the recent war. By the treaty France ceded the island to England, but retained Canada. France pressed, in the interests of her hardy fishermen, who had frequented the banks for a century or more, for a continuance of a share of the fishery privileges of the island, and England conceded them to this extent; the inshore fishery in common with British fishermen was granted on all the coast from Cape Bonavista on the east, round the north of the island to Cape Riche on the west, and the right to land and dry fish on that shore was given *exclusively* to the French. The English, to avoid quarrels, which were common, restricting themselves to the other parts of the coast. It must be remembered that at this time, and until 1763, Canada and Cape Breton still belonged to France.

Thus matters stood till 1783, when by the treaty of peace made then (about the same time as the treaty with the U.S.) the French rights were modified, but merely in this, the limits were made from Cape St. John, on the eastward, round by the north to Cape Ray on the west. That is the "French Shore" of to-day. England, however, undertook to remove such settlements as had been made on that coast and to prevent any new ones, and to leave the shore to the exclusive use of the French fishermen for drying fish, their nets and other such uses. This right has been retained in all subsequent treaties, and the French hold and exercise it to-day, much to the detriment of a large part of the Newfoundland coast. No mining can be done there: no fishing hamlets dot the coast. If



a vessel goes ashore there when the fishermen have returned to France, she goes upon an uninhabited land.

Such are the French rights. Now let us consider those of the Americans.

Before the war of independence all British colonists enjoyed equal privileges in fishing, but at the close of that war, it became a question how far such privileges should be restored to those who had separated from the British Crown. The matter was very fully discussed in the negotiations which preceded the treaty of Paris of 1783, and though Great Britain did not deny the right of Americans to fish on the banks, or in the Gulf of St. Lawrence, or elsewhere in the open sea, she denied their right to fish in British waters, i. e., the three miles from shore, or to land on British territory, for the purpose of drying or curing the fish. A compromise was at length arrived at, and it was agreed that United States' fishermen should be at liberty to fish on the coast of Newfoundland, but *not* to dry or cure their fish on that island; and they were also to be allowed to fish on the coasts of the other British possessions, and to dry and cure their fish in any of the unsettled bays of Nova Scotia, the Magdalen Islands, and Labrador, so long as they should remain unsettled; but so soon as any of them should become settled, the Americans were not to use them without agreement with the inhabitants.

It will, however, be observed that the rights conceded to the American fishermen, under this treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the war of independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador, where no British settlements were found.

So matters stood until the war of 1812, when, naturally, the right of Americans to fish in British waters, and to dry and cure their fish on British territory, terminated. In the negotiations which preceded the peace of 1814, at Ghent, this question was revived, and an alleged right of Americans to fish and cure fish within British jurisdiction was fully discussed. At that time, however, the circum-

stances had very considerably changed since the treaty of 1783. The British possessions had become more thickly populated, and there were fewer unsettled bays in Nova Scotia than formerly. There was, consequently, greater risk of collision between British and American interests; and the colonists and English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges granted by the treaty of 1783, to the American fishermen.

At Ghent, the British Government stated that "they did not intend to grant the United States, *gratuitously*, the privileges formerly conceded to them by treaty of fishing within the limits of British territory, or of using the shores of the British territories for purposes connected with the fisheries." They contended that the claim advanced by the United States of immemorial and prescriptive right, was quite untenable, inasmuch as the Americans had, until the revolution, been British subjects, and that the rights which they possessed formerly, as such, could not be continued to them after they had become citizens of an independent state. Accordingly it was agreed to omit all mention of this question from the treaty.

Orders were now sent out that, while not interfering with American fishermen engaged in fishing on the banks, in the Gulf of Saint Lawrence or on the high seas, they were to be prevented from using British territory for purposes connected with the fisheries, and to be excluded from the bays and coasts of all the colonies. The result was the capture of several American fishing vessels for trespassing within British waters. Then the United States in 1818 proposed that negotiations should be opened for the purpose of settling the disputed points which had arisen in connection with the fisheries. Commissioners were accordingly appointed by both parties to meet in London, and the convention of 20th October, 1818, was eventually signed.

Article I of this convention is, with slightly curtailed expressions, as follows:—

*Whereas* differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry and cure fish on certain coasts, bays, &c., of His Majesty's dominions in America. — *It is agreed*

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that the inhabitants of the said United States, shall have *forever*, in common with the subjects of His Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands (these are at the northern end); on the shores of the Magdalen Islands, and also on Labrador from Mount Joly, through the Straits of Belle Isle, and thence northwardly; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, &c., of the said southward part of the coast of Newfoundland, i.e., Cape Ray to Rameau Islands, and of the coast of Labrador; but, so soon as the same, &c., shall be settled, the right to cease. And the United States hereby *renounce* forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, &c., of any of His Majesty's dominions not included within the above-mentioned limits. *Provided*, however, that the American fishermen shall be admitted to enter such bays, or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever, abusing the privileges hereby reserved to them.

Under this convention arose what is known as "the headland question," which has been the subject of lengthy dispute. England, following the contentions of the United States, insisted that, under the convention, the three mile limit, in the case of large bays, extends from "headland to headland," and does not follow the sinuosities of the shore. England claims thus that the whole Bay of Fundy, the Baie des Chaleurs, and Miramichi Bay are excluded from American rights. I must own that, if the matter stood alone, I am not impressed with the British view, which appears to rest on very fine verbal criticism of the convention, but it is fairly contended that the convention must be construed as regards

British bays, as the United States at the time contended and still contend in respect to their bays. Now they have constantly contended that the great bays of Massachusetts (Cape Cod to Cape Anne) Delaware and Chesapeake are *domestic* bays, as they call them, and not open to foreign fishing. Our neighbors cannot, while they hold this view, dispute the British position on the Nova Scotian bays.

During this period American vessels were occasionally captured for fishing in our large bays, and much diplomatic correspondence and international friction ensued on this headland question. This was the state of affairs until 1847, when negotiations were opened between the two governments for the establishment of reciprocal free trade between Canada and the United States, coupled with the concession of some fishing privileges to the United States' fishermen. Much correspondence passed on the subject, but, owing to difficulties connected with the question of tariff, the United States appeared anxious to have the fisheries question dealt with separately, but to this the British Government would not assent.

At last in 1854, Lord Elgin, when in Washington, negotiated a treaty. This is known as the Reciprocity treaty of the 5th June, 1854. Its main provisions were as follows:—British waters on the east coast of North America were thrown open to United States' fishermen, and United States' waters north of the 36th degree were thrown open to British fishermen; excepting always the salmon and shad fisheries, (which were reserved to the subjects of each country);—certain articles of produce of the British colonies and of the United States were admitted to each country, respectively, free of duty. The treaty was to remain in force for ten years, and further for twelve months after either party should have given notice to the other of its wish to terminate the same.

From 1854 until 1865 the Reciprocity treaty continued in force, and no further difficulties appear to have arisen on questions connected with the fisheries; but in that year, 1865, the United States informed the British Government that at the expiration of 12 months the Reciprocity treaty was to terminate.

Efforts were made by England towards a renewal of the treaty, but these, from various reasons, proving unsuccessful, the treaty came to an end on the 17th of March, 1866; and as a consequence the American privileges under it lapsed, and reverted to those of the convention of 1818.

In the meantime a notice had been issued by the Canadian Government warning the American fishermen that their right to fish in British waters would cease on the above date, and it became necessary to consider what measures should be adopted for the protection of British rights.

Eventually it was decided that American fishermen should be allowed during the year 1866, to fish in all Canadian waters upon the payment of a nominal license fee, to be exacted as a formal recognition of right. This system, after being maintained for four years, was discontinued, owing to the neglect of American fishermen to provide themselves with licenses, and in 1870 it became necessary to take strict measures for the enforcement of British rights.

The result of these measures was the capture and forfeiture of several American vessels for infringing the provisions of the convention of 1818, both by fishing within British waters, and by frequenting Canadian ports for objects not permitted by the convention.

The difficulties caused by these events subsequently led to the re-opening of negotiations for the settlement of questions connected with the fisheries, and they formed part of the matters decided by the treaty of Washington of 1871.

In that general settlement of disputes the American fishermen obtained the use of the inshore fisheries all along the British coasts of Newfoundland, Nova Scotia, New Brunswick, and Quebec, with right to land and cure fish at any place so long as they did not interfere with private rights. The English fishermen obtained the right to fish on the American coast down to the line 39°, i.e. the Delaware,—a barren privilege—and reciprocal free trade in fish and fish oil was agreed to. The latter was a valuable privilege for the Canadian fishermen, as it gave them the American market for the results of their toils.

The treaty was for ten years, *plus* two years, from notice from either side of desire to cancel. It was, of course, known that the Canadian fisheries, given up for ten years *plus* two, as the minimum time under the treaty, were much more valuable than the rights granted to Canadians, and, as we all remember, the Halifax Commission was appointed to determine upon a sum to be paid by the United States for the surplus value of privileges. After a long examination the arbitrators awarded to Canada the sum of \$5,500,000, which, after some shabby demur and shameful charges against the distinguished Belgian ambassador, M. Delfosse, who was the umpire, was ultimately paid.

The treaty, in its fishery clauses, went into operation 1st July, 1873, and continues at present in force. During these years there has been rest. No seizures of interloping American schooners, no disputes on the headland question, and this might have continued, but that the United States, acting on the dictation of the American fishing interests, which desire to keep Canadian fish and oil from their market, have given the notice prescribed by the treaty to terminate it, and it expires on 1st July of this year. Then all the rights granted by the treaty of Washington in 1871 *end*, and the rights of the Americans go back to the restrictions of the convention of 1818, with all its attendant difficulties. The Americans will have no right to fish within the three-mile limit, except on the part of Newfoundland, already described, viz., from the Rameau Islands on the south coast to the Quirpon Islands at the north end, part of Labrador and the Magdalen Islands; and the only place for landing to cure fish will be the small part of Newfoundland coast on the south from Cape Ray to the Rameau Islands, and a part of Labrador. Then revives, of course, the great headland question, which slept during the period of the Reciprocity treaty, as well as that of Washington.

All this will be upon us very soon. July is not far away. Yet it is difficult to prophesy what will occur. A new treaty is in every way desirable, and yet we must see to it that it is not to be a treaty of sacrifice. It will doubtless be found that our government and that in England, are already in correspondence with

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Washington on the matter; for though our premier has recently spoken strongly against the propriety and possibility of doing anything towards a new reciprocity treaty, in view of the numerous refusals which have been given, that does not preclude some arrangement of the fisheries independent of reciprocity in general, as well as independent of the present reciprocity in the fish and oil trade.

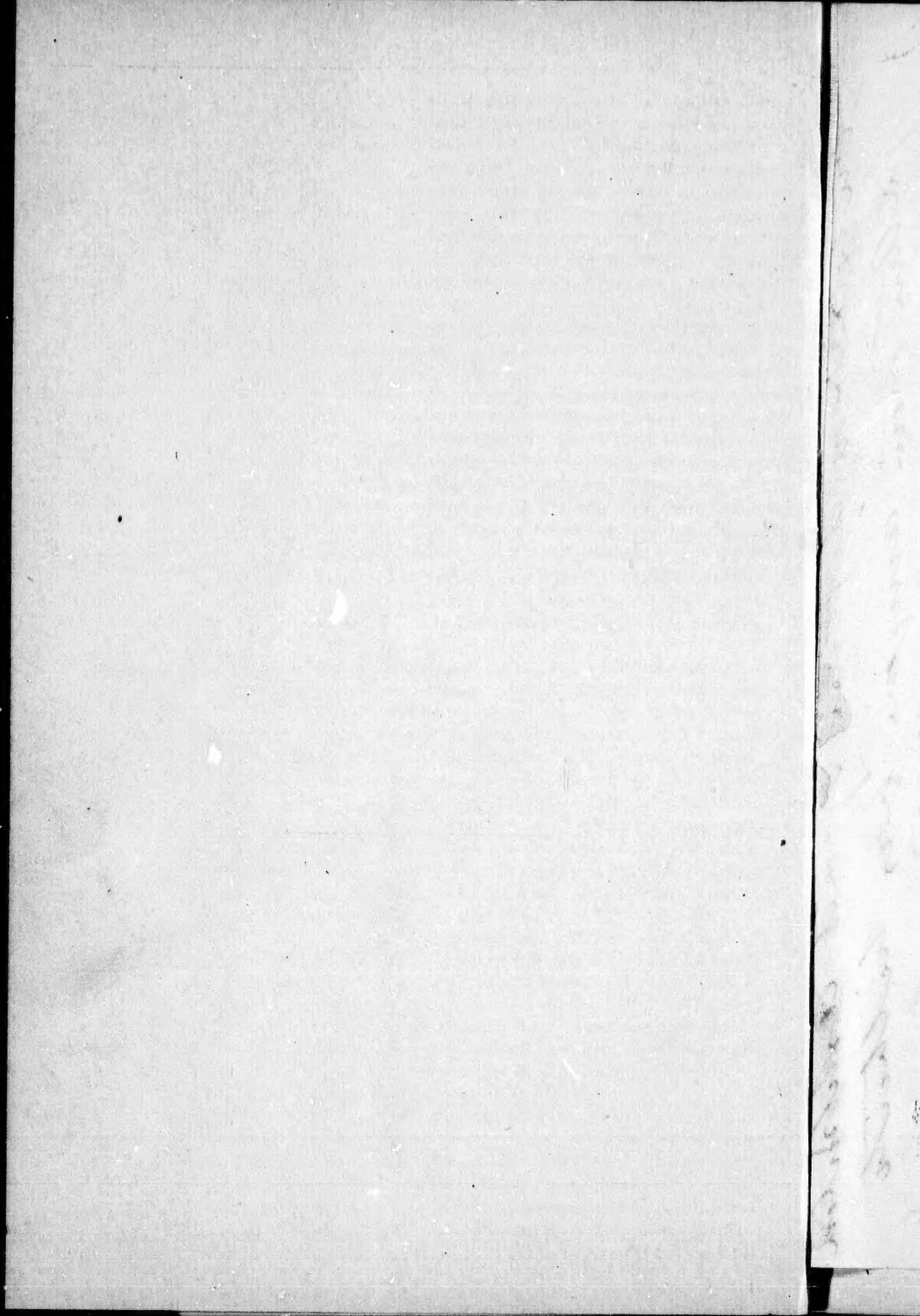
In the opinion of many a new fishery treaty is merely a matter of price. It has been said that the notice to terminate the present treaty has been given by the United States in order to prevent the Halifax award from forming the basis for annual payments beyond the twelve years provided as a fixed term by the treaty. They feared, it is said, that the award of \$5,500,000 would be claimed by Canada as the fixed basis of value of twelve years' privileges, and that they would be called upon to pay one-twelfth of that

sum per annum for the future. It is well known that the United States have always, wrongly we confidently think, contended that the award was excessive, and in that view a desire to obtain, if possible, a new measure of value, is not unreasonable.

While we cannot predict any particular course, we can feel confident, I think, that the times have greatly changed since the days of Oswald in Paris, in 1783, of Lord Ashburton in 1842, and Mr. Packenham in 1846, at Washington, and that we will hear of no more sacrifices in ignorance of the values of colonial rights. We live in different days, and, within recent years the point of view from which Canada is regarded in England has changed, information is more exact and general, and full value will be had for those possessions,—those valuable possessions, in connection with our fisheries, in which our American neighbours wish so much to share.



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Handwritten text in a cursive script, likely a letter or document, spanning the page. The text is written in a fluid, connected style, typical of 18th or 19th-century handwriting. The ink is dark, and the paper shows signs of age and wear.



R. A. Ramsay.  
Advocate, Solicitor &c.  
186, St. James St.  
(Canada Life Ass'n Coys Building)  
Montreal.

Montreal 9 July 1885

J. W. Lawrence Esq.  
St John N.B.

Dear Sir,

I have much pleasure in sending  
as requested a copy of my little  
paper on the Treates. It is in very  
popular form & somewhat too super-  
ficial for publication, - but such as  
it was they wanted it. -

Mr. Francis has certainly gone to  
an extent in defense of 2d Assentment  
further than anyone has hitherto  
attempted. All that has been said  
hitherto was that the case was one  
for compromise & that he made a  
fair one, with his lights. Sir F. N.  
says that he executed Webster in-  
stead of being executed. -

Those papers which you have made  
be interesting. Have they been printed?  
What do they give as the reason for the N.  
Branch of St Croix? - Should you not de-  
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Monthly 1875:6. Yours faithfully R. A. Ramsay